own obligations as well as on myriad private obligations. Usually the government is entitled to the same deference as to the "public and general" character of those measures that it gets for all legislation. *Winstar*, 518 U.S. at 899 (plurality op.). But when the principal—or, as in this case, *exclusive*—consequence of a statute is to relieve the government of the burden of its own financial obligations for goods or services already received, such deference is misplaced.

6. The opposition argues that forcing the United States to honor its debts "would deprive Congress of needed flexibility, because it would mean that Congress could not unilaterally extend a benefit with confidence that it could later withdraw that benefit in light of changed circumstances or second thoughts." Opp. 27. If the United States is talking about government benefits like social security then that argument is a red herring. Petitioners agree that such benefits may be withdrawn prospectively in light of changed circumstances, and nothing about their argument is inconsistent with that principle. If the United States means that it needs the "flexibility" to later renege after promising to honor a debt otherwise barred by a statute of limitations, the answer (again) is that contract law resolved long ago that such promises *are not* revocable.

If the United States means that it needs the "flexibility" to decide whether to pay its employees for work already performed and accepted, then it is profoundly mistaken. One of the great benefits of the Fifth Amendment is that it gives the federal government the valuable flexibility *to make binding commitments*. If the United States cannot make promises and be bound by them like any private citizen, then the "certain result" will be to "undermin[e] the Government's credibility at the bargaining table and increase[e] the cost of its engagements." *Winstar*, 518 U.S. at 884 (plurality op.); *see also Lynch v. United States*, 292 U.S. 571, 580 (1934) ("Punctilious fulfillment of contractual

obligations is essential to the maintenance of the credit of public as well as private debtors."); *Sinking-Fund Cases*, 99 U.S. (9 Otto) 700, 720–21 (1879). The Framers understood the short-term temptation to abrogate public financial obligations, and the Fifth Amendment is a protection against behavior that they understood to be both immoral and potentially disastrous to the government's own long-term financial credibility.

This case presents this Court with an opportunity to drain the jurisprudential swamp that has grown up around its divided decision in *Eastern Enterprises*, and to clarify the relationship between the Due Process and Takings Clauses when governmental monetary obligations are at stake. Certiorari should be granted.

CONCLUSION

Either the separate petition addressed to the Federal Circuit should be granted in its entirety, or both petitions should be granted and consolidated for argument.

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